



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98645; File No. SR-IEX-2023-11]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Implementation Date of Its New Fixed Midpoint Peg Order Type

September 29, 2023.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on September 28, 2023, the Investors Exchange LLC (“IEX” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Act⁴, and Rule 19b-4 thereunder⁵, IEX is filing with the Commission a proposal to extend the implementation date of its new fixed midpoint peg order type in advance of a potential partial shutdown of the federal government. The Exchange has designated this proposal as non-controversial under Section 19(b)(3)(A) of the Act⁶ and provided the Commission with the notice required by Rule 19b-4(f)(6)(iii) under the Act.⁷

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ 15 U.S.C. 78s(b)(1).

⁵ 17 CFR 240.19b-4.

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4(f)(6)(iii).

The text of the proposed rule change is available at the Exchange’s website at www.iextrading.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

IEX is filing this proposal to extend the implementation date of its new fixed midpoint peg order type⁸, which is designed to peg to the less aggressive of the order’s limit price or the Midpoint Price⁹, but does not re-reprice based on changes to the NBBO.¹⁰ IEX filed the immediately effective rule change on July 19, 2023, and it was published in the Federal Register on August 7, 2023 (“Original Rule Filing”).¹¹ Pursuant to the Original Rule Filing, the fixed midpoint peg order type is currently scheduled to be implemented within 90 days of the July 19, 2023 filing date, i.e., on or before October 17, 2023.

The Exchange anticipates that the technical changes necessary to implement the fixed midpoint peg order type should be completed in time to enable implementation on or before October 17, 2023. However, unforeseen delays may require that IEX extend the implementation

⁸ See IEX Rule 11.190(b)(19).

⁹ See IEX Rule 1.160(t).

¹⁰ See IEX Rule 1.160(u).

¹¹ See Securities Exchange Act Release No. 98035 (August 1, 2023), 88 FR 52233 (August 7, 2023) (SR-IEX-2023-06).

date a few weeks beyond October 17, 2023. IEX understands that as of September 26, 2023, there is a meaningful possibility of a partial federal government shutdown starting on October 1, 2023. IEX also understands that during a partial federal government shutdown, the Commission will not be able to accept and publish rule change proposal filings.¹² Thus, in advance of the potential partial federal government shutdown, and in an abundance of caution in case IEX requires a few additional weeks to implement the fixed midpoint peg order type, IEX now proposes to extend the October 17, 2023 implementation deadline to November 30, 2023.

IEX will still announce the implementation date by Trading Alert at least ten (10) days in advance of such implementation date. Besides the implementation date, the Exchange is not proposing to make any changes to the terms of the Original Rule Filing.

2. Statutory Basis

IEX believes that its proposal is consistent with the provisions of Section 6(b) of the Act¹³ in general, and with Section 6(b)(5) of the Act¹⁴, in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, the proposal is consistent with the Act because it will allow the Exchange to complete technical changes necessary to implement the fixed midpoint peg order type in a thorough and risk averse manner, thereby protecting investors. By making this filing in advance of a potential partial federal government shutdown, IEX is ensuring it will have the necessary time to implement the order type even if the federal government is partially shutdown.

Further, the ten (10) days' notice to market participants of the implementation date for the fixed midpoint peg order type is consistent with the Act because it will provide appropriate

¹² See Jeff Stein, et al., "A federal government shutdown looks more and more likely: what to know," The Washington Post, September 26, 2023.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

transparency to market participants and the Commission regarding the change. Finally, as noted in the Purpose section, the Exchange is not proposing to make any changes to the terms of the Original Rule Filing other than the implementation date.

B. Self-Regulatory Organization's Statement on Burden on Competition

IEEX does not believe that the proposal will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. As explained above, the purpose of this proposal is to modify the timing of the planned implementation of a new fixed midpoint peg order type with appropriate notice to inform market participants and the Commission of the change. The implementation delay will impact all market participants equally. The Exchange does not expect the implementation date change to place any burden on competition. Rather, postponing implementation will allow the Exchange to implement the original rule change in a thorough and risk averse manner and is not designed for any competitive purpose.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act¹⁵ and Rule 19b-4(f)(6)¹⁶ thereunder. Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(6).

investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁷ and Rule 19b-4(f)(6) thereunder.¹⁸

The Exchange believes that the proposed rule change meets the criteria of subparagraph (f)(6) of Rule 19b-4¹⁹ because it would not significantly affect the protection of investors or the public interest in that it is designed to allow the Exchange to complete technical changes necessary to implement the original rule change in a thorough and risk adverse manner, thereby protecting investors. Accordingly, the Exchange believes that this proposal is noncontroversial and satisfies the requirements of Rule 19b-4(f)(6).²⁰

A proposed rule change filed under Rule 19b-4(f)(6)²¹ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²² the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. Waiving the 30-day delay in this manner would permit the Exchange to implement the proposal prior to expiration of the latest implementation date to the original rule change, thereby avoiding any potential confusion on the part of market participants or the Commission as to when the original rule change will be implemented. For these reasons, and because the proposed rule change does not raise any novel legal or regulatory issues, the Commission believes that waiving the 30-day operative delay is consistent with the protection of

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁹ 17 CFR 240.19b-4(f)(6).

²⁰ 17 CFR 240.19b-4(f)(6).

²¹ 17 CFR 240.19b-4(f)(6).

²² 17 CFR 240.19b-4(f)(6)(iii).

investors and the public interest. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.²³

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) of the Act²⁴ to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-IEX-2023-11 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-IEX-2023-11. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all

²³ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁴ 15 U.S.C. 78s(b)(2)(B).

comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or

withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-IEX-2023-11 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

Sherry R. Haywood,

Assistant Secretary.

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